

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CECIL LAMAR HALL,

Petitioner,

vs.

DIRECTOR DEPARTMENT OF
CORRECTIONS, *et al.*,

Respondents.

2:08-cv-01825-GMN-GWF

ORDER

This represented habeas action under 28 U.S.C. § 2254 comes before the Court on respondents' motion (#33) to dismiss the petition for lack of complete exhaustion and petitioner's motion (#35) for a stay to return to state court to exhaust the unexhausted ground. No opposition has been filed to the motion for a stay.

Pursuant to *Rhines v. Weber*, 544 U.S. 269, 125 S.Ct. 1528, 161 L.Ed.2d 440 (2005), and further pursuant to Local Rule LR 7-2(d), the Court finds that petitioner has demonstrated good cause, that the unexhausted ground is not plainly meritless, and that petitioner has not engaged in intentionally dilatory litigation tactics.

The Court expresses no opinion as to whether the circumstances presented satisfy the cause and prejudice standard with respect to any claim of procedural default. The Court's holding herein should not be read as an express or implied holding on this issue or any other issue. The Court holds only that the criteria for a stay under *Rhines* have been satisfied, and its findings and holding are expressly limited to that specific context.

The motion to dismiss accordingly will be denied without prejudice.

1 IT THEREFORE IS ORDERED that petitioner's motion (#35) for a stay is GRANTED
2 and that this action is STAYED pending exhaustion of the unexhausted claims. Petitioner
3 may move to reopen the matter following exhaustion of the claims, and any party otherwise
4 may move to reopen the matter at any time and seek any relief appropriate under the
5 circumstances. The reopened matter will proceed under the current docket number.

6 IT FURTHER IS ORDERED that the grant of a stay is conditioned upon petitioner filing,
7 if same has not been filed previously, a state post-conviction petition or other appropriate
8 proceeding in state district court within forty-five (45) days of entry of this order and returning
9 to federal court with a motion to reopen within forty-five (45) days of issuance of the remittitur
10 by the Supreme Court of Nevada at the conclusion of all state court proceedings.¹

11 IT FURTHER IS ORDERED that, with any motion to reopen filed following completion
12 of all state court proceedings pursued, petitioner: (a) shall attach an indexed set of exhibits
13 (with the corresponding CM/ECF attachments identified by exhibit number(s) on the docketing
14 system) containing the state court record materials relevant to the issues herein that cover
15 the period between the state court exhibits on file in this matter and the motion to reopen; and
16 (b) if petitioner intends to amend the petition, shall file a motion for leave to amend along with
17 the proposed verified amended petition or a motion for extension of time to move for leave.²

18 IT FURTHER IS ORDERED that, following upon petitioner's motion or motions (*i.e.*,
19 any motion to reopen, for leave to amend, for an extension, or for other relief), respondents
20 thereafter shall have thirty (30) days to file a response to the motion or motions filed. The
21 Court will re-screen the matter after the matter is reopened, and the Court will issue an
22 appropriate scheduling order regarding the presentation of defenses to the petition, as
23 amended, after it has been determined whether the pleadings will be amended following the
24 stay.

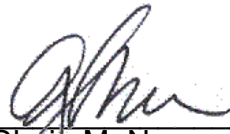
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27 ¹If *certiorari* review will be sought or thereafter is being sought, either party may move to reinstate the
28 stay for the duration of any such proceedings. *Cf. Lawrence v. Florida*, 549 U.S. 327, 335, 127 S.Ct. 1079,
1084, 166 L.Ed.2d 924 (2007).

²No claims are dismissed by this order.

1 IT FURTHER IS ORDERED that respondents' motion (#33) to dismiss is DENIED
2 without prejudice to the reassertion of any and all defenses then applicable based upon the
3 record presented following the stay, following a scheduling order directing a response.

4 IT FURTHER IS ORDERED that the Clerk of Court shall ADMINISTRATIVELY CLOSE
5 this action until such time as the Court grants a motion to reopen the matter.

6 DATED this 4th day of January, 2012.

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11 Gloria M. Navarro
12 United States District Judge
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